

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO
VILLATORO, MISAEAL ALEXANDER MARTINEZ
CASTRO, ANGEL MARTINEZ, EDWIN ULLOA
MOREIRA and MATEO UMANA individually and on
behalf of all others similarly situated,

Plaintiffs,

-against-

KELCO CONSTRUCTION, INC., KELCO
LANDSCAPING, INC., E.L.M. GENERAL
CONSTRUCTION CORP. D/B/A KELLY'S CREW,
JOHN KELLY and JOSEPH PROVENZANO,

Defendants.

Case No. 1:21-CV-09014
(PAE)(SDA)

**DECLARATION OF ELVIS CANALES IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION PURSUANT TO 29 U.S.C. § 216(b)**

I, Elvis Canales, pursuant to 28 U.S. C. § 1746, declare as follows:

1. I submit this declaration in support of Defendants' Opposition to Plaintiffs' Motion for Conditional Certification pursuant to 29 U.S.C. § 216(b). I am personally familiar with the facts set forth below and submit this declaration based on my personal knowledge.

2. I am a resident of Amityville, New York.

3. I currently work for Kelco Construction as a laborer. I have been working for Kelco Construction for approximately four (4) years.

4. I also performed non-union work for ELM on Saturdays at the Hauppauge facility once every three (3) or four (4) months.

5. As a laborer, I work in the irrigation department, installing or replacing sprinklers and/or irrigation systems.

6. I am a union member of Local 731 Laborers.

7. I arrived at a park-and-ride location at 110 Huntington each morning at around 4:45 a.m. This park-and-ride location is closer to New York City than it is to 25 Newton Place, Hauppauge, New York ("Hauppauge facility"). It takes me approximately 45 minutes to commute to the worksites in New York City from this park-and-ride.

8. I normally got a ride through work from the park-and-ride location. This was a good benefit for me to get a ride through work instead of driving myself into New York City.

9. Kelco Construction did not require me to report to the Hauppauge facility prior to the start of the workday. I visited the Hauppauge facility infrequently for personal reasons. I may have frequented the Hauppauge facility once every two (2) months.

10. At times, I drove into New York City by myself for work for personal reasons. For instance, if I had to drive to Maryland after work, I would drive into New York City on my own for work and drive to Maryland from New York City after work.

11. I work for approximately eight (8) hours per day. For example, if I started work at 7:00 a.m., I ended work at 3:30 p.m. and if I started work at 6:00 a.m., I ended work at 2:30 p.m.

12. The union wage for Kelco Construction work is \$44.00 per hour. For non-union ELM work, my hourly wage is \$25.00.

13. My primary language is Spanish. On January 24, 2023, Luis Lopez, CCI verbally translated this declaration to me in Spanish. I fully understand the contents of this declaration in my primary language.

14. This declaration was prepared by counsel for Defendants in the action based on an interview in which I voluntarily participated. I was advised that I could end the interview at any time. I have also been told by counsel for the Defendants that I should sign this declaration if I

want to and if everything within it is true and correct to the best of my knowledge, information, and belief. I have been given a full opportunity to review this declaration carefully and freely and make any corrections and additions of any kind.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: January 24, 2023



Elvis Canales